Supreme Court, U.S.
FILED
MAR 22 1996
CLERK

No. 95-1182

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ST. PETER VILLA, INC., *et al.*,

Petitioners,

v.

MILDRED LEA LINTON, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Sixth Circuit

BRIEF IN OPPOSITION TO CERTIORARI

ELAINE R. JONES
DIRECTOR-COUNSEL

NORMAN J. CHACHKIN
MARIANNE L. ENGELMAN LADO
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
(212) 219-1900

* G. GORDON BONNYMAN, JR.
Tennessee Justice Center
203 2nd Avenue North
Nashville, TN 37201
615) 255-0331

PAM FORD WRIGHT
West Tennessee Legal Services
P. O. Box 2066
Jackson, TN 38301
(901) 423-0616

* Counsel of Record

Attorneys for Respondents LINTON and CARNEY

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

As Respondents demonstrate in this brief, the Question Presented by Petitioners does not arise in this case.

Petitioners have framed the "Question Presented" as though the court below had simply summarily affirmed the district court's judgment -- without any indication whether its holding was based upon one or the other of the district court's liability determinations: *i.e.*, that Tennessee's Medicaid program, as it was administered at the time this litigation was brought, violated the "Medicaid Act"* and Title VI of the 1964 Civil Rights Act. However, the court below was explicit:

> Because we find the remedial plan as disputed on appeal is adequately predicated upon the district court's unchallenged finding that Tennessee's limited bed policy violated the Medicaid Act, we need not address whether the district court erred in finding that the limited bed policy had a disparate impact on blacks.

23a, 65 F.3d at 520. Since the relief affecting Petitioners, about which they complained below, was held to be fully supported by the unchallenged Medicaid Act violation found by the district court, the critical factual predicate for the Question Presented in the Petition is lacking.

---

*Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*

Table of Contents

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF REASONS FOR DENYING THE WRIT 5

REASONS FOR DENYING THE WRIT 5

CONCLUSION 9

Table of Authorities

Page

Cases

Linton v. Commissioner of Health & Env't, 65 F.3d 508 (6th Cir. 1995) . . . . . *passim*

Linton v. Commissioner of Health & Env't, 973 F.2d 1311 (6th Cir. 1992) 3,4

Magnum Import Co. v. Spoturno, 262 U.S. 159 (1923) 7

Tennessee Health Care Ass'n v. Commissioner, Tennessee Dep't of Health and Env't, No. 91-5789 (6th Cir. Feb. 26, 1992), 1992 WL 36217 5

Statutes

Medicaid Act, Title XIX of the Social Security Act 42 U.S.C. §§ 1396 *et seq.* . . . . . *passim*

Medicaid Act, at 42 U.S.C. § 1396r(c)(2)(A) 2

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.* . . . . . *passim*

Other

ROBERT L. STERN & EUGENE GRESSMAN, SUPREME COURT PRACTICE (5th ed. 1979) . 7

Sup. Ct. Rule 10.1 6

BRIEF IN OPPOSITION TO CERTIORARI

Statement of the Case

The Petitioners' Statement of the Case requires amplification or clarification as follows (where possible, Respondents (Plaintiffs below) rely upon the unchallenged factual findings in this case, as summarized in the opinion of the court below):

> Plaintiffs contested the validity of Tennessee's implementation of distinct part certification under Title XIX of the Social Security Act [citations and footnote omitted]. Under distinct part certification, a provider of a skilled nursing facility (SNF) could certify a distinct part of a facility (e.g., a wing, one side of a corridor, a floor) for Medicaid participation, for patients requiring a different level of care [footnote omitted]. As part of distinct part certification, Tennessee allowed skilled nursing facilities, at their discretion, to "spot" certify beds for Medicaid participation. This practice allowed fewer than all beds within a particular wing or floor to be available for Medicaid recipients regardless of their required level of care. In addition, Tennessee allowed facilities to certify as Medicaid beds fewer than all beds available for residents residing in intermediate care facilities.

Linton v. Commission of Health & Env't ("*Linton III*"), 4a-5a, 65 F.3d 508, 511 (6th Cir. 1995). These policies allowed nursing homes to segregate patients receiving Medicaid benefits within their facilities, and to reduce the number of Medicaid-certified beds on an *ad hoc* basis, causing denial of access to nursing home care for

some Medicaid recipients and the dislocation and involuntary transfer of others, including the plaintiffs.

Mildred Lea Linton, the original plaintiff in this action when it was filed on December 19, 1987,

> receive[d] Medicaid assistance and [wa]s severely disabled from rheumatoid arthritis. . . . [The nursing home in which she resided] informed Linton that it intended to decertify her Medicaid bed . . . [which] would force Linton to leave the nursing home where she had lived for four years and which was located close to her family, with no assurance that a Medicaid bed would be available for her elsewhere.[1]

> Plaintiff-intervenor, Belle Carney, age 89 at the time this suit was filed, suffer[ed] from Alzheimer's disease. In 1987, she was hospitalized for two weeks and was to be discharged to a nursing home. Carney, who [wa]s eligible for Medicaid and is black, had

---

[1]The nursing home took this action after Linton's medical care needs were reviewed and modified from Skilled to Intermediate nursing care. *Linton III*, 5a, 65 F.3d at 511. Effective October 1, 1990, nursing homes participating in the Medicaid program may not take such actions, both because the distinctions among levels of care have been eliminated and because Congress added statutory guarantees against the involuntary discharge of residents requiring *any* level of care provided by a facility. 42 U.S.C. § 1396r (c)(2)(A), *added by* P.L. 100-203, § 4211, 101 Stat. 1330-182, *quoted in* Petition at 5-6 n.1.

> difficulty finding a Medicaid bed. In the interim, she was shunted among a series of inadequate and unlicensed facilities.

Id. at 6a, 65 F.3d at 511. Plaintiffs asserted that Tennessee Medicaid policies permitting these actions violated a number of provisions of Title XIX of the Social Security Act (hereafter "the Medicaid Act"), 42 U.S.C. §§ 1396 *et seq.*, and resulted in racially disparate denial, termination, or provision of nursing home services in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*

On January 5, 1988 the matter was referred to a Magistrate Judge. On October 14, 1988 the district court adopted the Magistrate Judge's Report and Recommendation in part, certifying the suit as a class action on behalf of present and future Medicaid-eligible individuals seeking nursing home services from a facility certified as eligible to participate in the Tennessee Medicaid program. The court also denied plaintiffs' request for a preliminary injunction. *Linton III*, 4a n.2, 65 F.3d 511 n.2; *id.* at 7a, 65 F.3d at 512; *Linton v. Commissioner of Health & Env't* ("*Linton I*"), 973 F.2d 1311, 1314-15 (6th Cir. 1992).

On April 23, 1990, the district court ruled that the Tennessee Medicaid policies at issue violated various provisions of the Medicaid Act and implementing regulations. 114a-117a, 120a-122a. The court separately ruled that, because of its disparate adverse impact on African-American Medicaid patients, the policies also violated the Title VI statute and regulations. 119a-120a. The court directed the defendant Commissioner to submit a remedial plan to

bring Tennessee's Medicaid program into compliance with the law. 123a.

On June 1, 1990, Tennessee filed a proposed remedial plan containing a series of modified policies to govern nursing home participation in the State's Medicaid program. Plaintiffs, who had negotiated with the State about acceptable remedies, endorsed the plan, which was approved by the district court and incorporated into its final order on July 5, 1990.[2] The plan was subsequently approved by the federal government as consistent with the Medicaid Act.[3]

---

[2]When it submitted the plan, the State reserved the right to appeal the district court's liability rulings if the plan were modified or disapproved in part. *Linton I*, 973 F.2d at 1316 n.9.

[3]On October 22, 1990, the Tennessee Health Care Association (of which Petitioners are members, *see Linton I*, 973 F.2d at 1315) filed suit against the defendant Commissioner seeking to compel Tennessee formally to submit the plan to the federal Health Care Financing Administration (HCFA), which oversees the Medicaid program within the Department of Health & Human Services, for its approval. While that case was pending, the Association

> received a letter from George Holland, Regional Administrator of HCFA Region IV. As Regional Administrator, Holland has the authority pursuant to 42 C.F.R. § 430.15 to approve Medicaid state plan amendments. Holland's letter stated that HCFA had reviewed

SUMMARY OF REASONS FOR DENYING THE WRIT

The question sought to be presented by Petitioners, whether the Court of Appeals erred in affirming the District Court's remedial plan, does not merit this Court's review. The decision of the Court of Appeals presents neither a conflict among the Circuit Courts of Appeals, nor a conflict with the decision of any state's highest court. Moreover, the case raises no important question of federal law. The Court of Appeals followed, rather than departed from, the accepted and usual course of judicial proceedings in approving a remedial order that it found to be supported by undisputed violations of the Medicaid Act, without deciding other questions the resolution of which would not alter its affirmance of the district court's judgment.

REASONS FOR DENYING THE WRIT

Pursuant to Rule 10, review on *certiorari* is a matter of discretion and may only be granted when

---

> the Linton plan and concluded that no formal state plan amendment was required and that the Linton plan was consistent with federal requirements.

The Association thereafter dismissed its lawsuit with prejudice. *Tennessee Health Care Ass'n v. Commissioner, Tennessee Dep't of Health and Env't*, No. 91-5789 (6th Cir. Feb. 26, 1992), 1992 WL 36217, at *1; *Linton III*, 10a, 65 F.3d at 513.

there are "special and important reasons therefor." Sup. Ct. Rule 10.1 The Petition does not satisfy any of the criteria for issuance of the Writ.

Petitioners cannot and do not assert that the decision below creates a conflict among the Courts of Appeals. Neither does the case conflict with a decision of any state's highest court. Hence, review of this case would not serve a principal purpose for the exercise of *certiorari* jurisdiction.

As grounds for issuing the writ, Petitioners argue only that the ruling below involves a purported error that the Court should correct in an exercise of its supervisory powers. The alleged error is the Court of Appeals' failure to pass on the trial court's finding of Title VI liability. The Court of Appeals found it unnecessary to reach that question based on its conclusion that "the remedial plan as disputed on appeal is adequately predicated upon the district court's unchallenged finding that Tennessee's limited bed policy violated the Medicaid Act," *Linton III*, 23a, 65 F.3d at 520, so that the district court's judgment approving the plan would be unaffected by any ruling on Title VI issues.

Petitioners' contention has no significance beyond the immediate litigation and addresses no important question of federal law.[4] As Chief Justice

---

[4]By comparison, a petition raising a claim that a remedial order in a suit such as this in fact conflicted with federal Medicaid law might have, for example,

Taft stated in *Magnum Import Co. v. Spoturno*, 262 U.S. 159, 163 (1923), this Court's jurisdiction was not conferred "merely to give the defeated party in the circuit court of appeals another hearing." *See also* ROBERT L. STERN & EUGENE GRESSMAN, SUPREME COURT PRACTICE 257-68, 297-300 (5th ed. 1979).

In addition, Petitioners' representation that the discrete provisions of the remedial decree about which they complain were predicated upon findings of violation of Title VI rather than the Medicaid Act is not correct. The components of the Linton plan that Petitioners specifically challenge, *i.e.*, first come, first serve admissions and the "lock-in" and "lock-out" provisions, were all contained in Section III of the remedial plan, which, according to the terms of the plan, "addresses distinct part certification, including prophylactic measures to prevent or mitigate provider attrition." 29a. The Title VI remedies, on the other hand, were contained in Section IV of the plan, which "redresses the finding of disparate impact upon minority Medicaid patients' access to nursing home care." *Id.* As the Sixth Circuit found,

> [A]ll of the remedies challenged on appeal appear in Part III of the plan. None of these

---

involved a significant issue concerning the construction and application of Acts of Congress or federal administrative regulations. Petitioners do not, however, present such a question and have not challenged HCFA's finding that the Linton plan is consistent with federal Medicaid law.

> remedies are predicated on a finding of a Title VI violation alone. At most, they are all incorporated by reference within Part IV, which incorporates by reference Part III of the Plan.

Linton III, 10a, 65 F.3d at 514.[5]

In sum, the present Petition for *Certiorari* amounts to a request that this Court review an appellate court's decision based upon a wholly illusory claim that determination of the Title VI issue was necessary if the district court's judgment were to be upheld. Review is therefore completely unwarranted.

---

[5]The opinion of the Sixth Circuit thoroughly considered the merits of Petitioners' challenges to the remedy, each of which concerned elements of Section III of the plan. *Linton III*, 11a-23a, 65 F.3d at 514-20. Petitioners apparently seek in this Court to raise new questions about remedial provisions found in Part IV of the plan, such as monitoring and compliance standards. *See* Pet. at 15-16. These questions are not properly presented because they were neither raised before nor addressed by the Court of Appeals.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted:

ELAINE R. JONES
DIRECTOR-COUNSEL

NORMAN J. CHACHKIN
MARIANNE L. ENGELMAN LADO
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
(212) 219-1900

* G. GORDON BONNYMAN, JR.
Tennessee Justice Center
203 2nd Avenue North
Nashville, TN 37201
615) 255-0331

PAM FORD WRIGHT
West Tennessee Legal Services
P. O. Box 2066
Jackson, TN 38301
(901) 423-0616

* Counsel of Record

Attorneys for Respondents LINTON and CARNEY

March 22, 1996